

### **REMARKS/ARGUMENTS**

Claims 1-27 are pending.

Claims 1, 8 and 10 are amended to clarify that the receptacle is adapted to be received in a motor vehicle drink holder. Also, the means of claim 1 is clarified as separate from and contacting the closed bottom, and the prongs of claims 8 and 10 are clarified as contacting the closed bottom. Support is found in Figs. 1 and 2.

Claims 12-17, 22 and 23 are amended to clarify that the means or prongs are connected to the closed bottom.

In claim 10, line 3, the claim currently reads "at least one prong." Also, claim 10 is amended to clarify that the at least one prong is "mounted on" the closed bottom. Support is found in Figs. 1 and 2.

These amendments address the rejection of claims 1-11 and 12-27 as indefinite under 35 U.S.C. § 112.

#### **Rejections under 35 U.S.C. § 102**

The rejections of claims 1, 4, 5, 7 and 13 as anticipated by Gory, claims 1, 4-6, 12, 19 and 20 as anticipated by Lindsay, and claims 1, 7 and 12 as anticipated by Gish, are respectfully traversed.

As an initial matter, Gory has a filing date of September 4, 2003 and Lindsay has a filing date of May 6, 2003. Both of these filing dates are after the priority date of the current application, which claims the benefit of U.S. Provisional Applications 60/430,600, filed on December 2, 2002, and 60/449,300, filed on February 20, 2003. Therefore, Gory and Lindsay are improperly cited as references and do not anticipate the claims.

Moreover, even considering Gory and Lindsay, neither of these references anticipates the claims. Claim 1 currently calls for a means separate from and contacting the closed bottom. In contrast, Gory and Lindsay only teach the bottom of the receptacle itself (bottom 20 in Gory, and bottom of receptacle 62 in Lindsay). No separate means independent of the receptacle bottom is

taught by the references. Because Gory and Lindsay fail to teach all claim elements, claim 1 and claims dependent upon claim 1 are not anticipated.

As for Gish, this reference also fails to teach a means separate from and contacting the closed bottom, as called for in claim 1. At most, Gish teaches the bottom of a flower pot, but does not teach a separate means independent of the bottom. Because all claim elements are not taught by Gish, claims 1, 7 and 12 are not anticipated.

#### Rejections under 35 U.S.C. § 103

The rejection of claims 1-27 as obvious over Ho in view of various other references is respectfully traversed. To establish a *prima facie* case of obviousness, there must be some reason to modify the references or to combine reference teachings. Such a reason is lacking in this case.

According to the Office Action, the combination of Ho's container and the prongs taught by Sakamoto would be obvious. However, this is not the case. As shown in Fig. 5, Ho teaches that flowers in the container are fully supported by a tray 2. Because the container already has support for flowers, there is no reason to add a second, redundant device to support flowers, such as the set of prongs described by Sakamoto. Ho teaches away from adding a second support for the flowers, thus indicating that the combination of Ho and Sakamoto is not obvious.

For similar reasons, Ho teaches away from adding other types of supports shown in the remaining references. Thus, any combination of Ho with these other cited references is not obvious.

Moreover, Ho teaches that his container doubles as a cup, garbage container, ash tray or pen holder (see Abstract and figures). These additional uses further discourage or teach away from the combination of the Ho with the other references. A cup would be unlikely to have a set of prongs or other supports connected to the container bottom since a cup with prongs would be aesthetically unappealing and potentially dangerous to a drinker. A garbage container or ash tray would be unlikely to have a set of prongs connected to the container bottom since pieces of garbage or ash would catch between the prongs, making it difficult to keep the container fresh and clean. As for a pen holder, Ho teaches that the tray 2 already provides support for pens, as

shown in Fig. 4. Thus, the combination of the Ho container with another support for pens (i.e., a set of prongs) would be discouraged, and is not obvious.

Nothing suggests combining Ho with the other cited references. Indeed, the teachings of the references actually discourage and teach away from any combination. When the references teach away from combining their elements, this is an indication that the combination of references is nonobvious. Therefore, based on the teachings of the cited references, claims 1-27 are not obvious.

In view of the foregoing amendments and remarks, Applicants submit that the present application is in condition for allowance. A Notice of Allowance is therefore respectfully requested.

Applicant is submitting herewith a Petition and fee for a three month extension of time.

No other fee is believed due. However, the Commissioner is hereby authorized during prosecution of this application and any related appeal, to charge any fees that may be required (except for patent issue fees required under 37 CFR §1.18) or to credit any overpayment of fees to Deposit Account No. 50-0337. If an extension of time is required in connection with this paper, please consider this a Petition therefor and charge any fees required to Deposit Account No. 50-0337.

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Respectfully submitted,



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